vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6092 OF 2007

Om Satnam C.H.S. Ltd. & Anr. ... Petitioners

V/s.

Brihanmumbai Municipal
Corporation & Ors. ... Respondents

Mr.Bharat Joshi for Petitioners
Mr.Anil Singh for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 6, 2007**

P.C.:

. This petition challenges the order passed by the City Civil Court on 26.7.2007. By this order, the trial Judge has held that the Notice of Motion No.3693 of 2006 would be heard before the trial of the suit "considering the delicacy of the matter". On 21.12.2006, his predecessor had directed that both the Notice of Motion and the Suit should be heard together as evidence was required to be led in the Motion as well.

2. There is a dispute as to whether the petitioner No.2 who has filed the suit alongwith the society has a right to prosecute the suit. According to Respondent Nos.3 and 4, Petitioner No.2 is no longer the Secretary of the society and therefore, he could not continue with suit on behalf of the society. It is for

this reason that the Notice of Motion No.3693 of 2006 has been preferred in the suit.

3. In view of the dispute as to whether the Petitioner No.2 had a right to prosecute the suit in his capacity as the Secretary of the society, the notice of motion was to be heard alongwith the suit and evidence in both the matters was to be recorded as directed by the earlier order dated 21.12.2006. There is no application filed to recall the earlier order nor is there any reason mentioned in the impugned order for modifying or recalling the earlier order. In these circumstances, the impugned order cannot be sustained.

4. The learned Counsel for Respondent Nos.3 and 4 has raised a preliminary objection regarding the maintainability of the petition which Petitioner No.2 has filed on behalf of the society, claiming to be its Secretary. In my opinion, since this dispute is still to be decided by the City Civil Court, the petition is maintainable.

5. In the circumstances, the impugned order is set aside. The trial Court is directed to hear and decide both the Notice of Motion and the suit together. Evidence in both the matters shall be recorded together. Petition is disposed of accordingly.